

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

FILED
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2005 FEB -3 PM 12:24
U.S. DISTRICT COURT
DISTRICT OF MASS

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

10228 RE

Plaintiff,

* MAGISTRATE JUDGE New judge

v.

BLASE, INC., BRIAN HART, AND
CHRISTINE HART

* CIVIL ACTION

Defendants.

* FILE NO.

RECEIPT #
AMOUNT \$ 117.9
SUMMONS ISSUED yes
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK 1001
DATE 2/4/05

COMPLAINT

Plaintiff brings this action to enjoin defendants from violating the provisions of sections 7 and 11 of the Fair Labor Standards Act of 1938, as amended (29 USC §201, *et seq.*), hereinafter called the Act, and to recover unpaid wages and liquidated damages pursuant to the provisions of sections 15 (a) (2) and 16 (c) of the Act.

I.

Jurisdiction of this action is conferred upon the Court by section 17 of the Act and by 28 USC § 1345.

II.

Defendant Blasc, Inc. is, and at all times hereinafter mentioned was, a corporation having a place of business at 328 Commercial Street, Provincetown, Massachusetts within the jurisdiction of this Court and is now, and at all times hereinafter mentioned was, engaged at that place of business, and elsewhere, in the operation of a restaurant under the name and style of Cafe Blase.

III.

Defendant Brian Hart maintains an office and operates a business at 328 Commercial Street, Provincetown, Massachusetts, within the jurisdiction of this Court and is now, and at all times hereinafter mentioned was, a principal owner and operating officer of the aforesaid corporation and as such actively manages, supervises and directs the business affairs and operations of said corporation. This defendant has acted at all times material herein directly and indirectly in the interest of said corporation in relation to its employees and was, and is, therefore, an employer of said employees within the meaning of the Act.

IV.

Defendant Kristine Hart maintains an office and operates a business at 328 Commercial Street, Provincetown, Massachusetts, within the jurisdiction of this Court and is now, and at all times hereinafter mentioned was, a principal owner and operating officer of the aforesaid corporation and as such actively manages, supervises and directs the business affairs and operations of said corporation. This defendant has acted at all times material herein directly and indirectly in the interest of said corporation in relation to its employees and was, and is, therefore, an employer of said employees within the meaning of the Act.

V.

Defendants are, and at all times hereinafter mentioned were, engaged in related activities performed through unified operation or common control for a common business purpose, and they are, and at all times hereinafter mentioned were, an enterprise within the meaning of section 3(r) of the Act.

VI.

At all times hereinafter mentioned, defendants employed employees in the activities of said enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, at all times hereinafter mentioned, has had an annual

gross volume of sales made or business done in an amount not less than \$500,000.00. Therefore, the said employees have been employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s).

VII.

Defendants have willfully and repeatedly violated and are violating the provisions of sections 7 and 15(a)(2) of the Act by employing employees for workweeks longer than forty (40) hours without compensating them for their employment in excess of forty (40) hours in said workweeks, at rates not less than one and one-half times the regular rate at which they were employed.

VIII.

Defendants have willfully and repeatedly violated and are violating the provisions of sections 11(c) and 15(a)(5) of the Act in that they failed to make, keep and preserve adequate and accurate records of employees' wages, hours, and other conditions and practices of employment as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 CFR 516, in that records fail to show adequately and accurately, among other things, the hours worked each workday and the total hours worked each workweek with respect to many employees and the regular rates at which they were employed.

IX.

During the period since June 1, 2002 defendants have willfully and repeatedly violated and are violating the aforesaid provisions of the Act, as alleged, and a judgment enjoining such violation is expressly authorized by section 17 of the Act.

WHEREFORE, cause having been shown, plaintiff prays judgment permanently enjoining and restraining defendants, their agents, servants, employees, and those persons in active concert or participation with them, or acting in their interest and behalf, from violating the provisions of sections 7 and 11 of the Act, and costs.

X.

During the period since June 1, 2002, defendants have willfully and repeatedly violated and are violating the aforesaid provisions of the Act. An award of actual and liquidated damages is specifically authorized by section 16(c) of the Act.

WHEREFORE, cause having been shown, plaintiff demands judgment ordering payment of unpaid wages found by the Court to be due defendants' employees plus an equal amount as liquidated damages, and costs.

Post Office Address:

U.S. Department of Labor
Office of the Solicitor
JFK Federal Bldg., Room E-375
Boston, MA 02203
TEL: 617-565-2500
FAX: 617-565-2142

Howard M. Radzely
Solicitor of Labor

Frank V. McDermott, Jr.
Regional Solicitor


John S. Casler
Deputy Regional Solicitor
BBO #078060

U.S. Department of Labor
Attorneys for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS ELAINE L. CHAO, Secretary of Labor, United States Department of Labor		DEFENDANTS BLASE, INC., BRIAN HART and CHRISTINE HART	
(b) County of Residence of First Listed Plaintiff <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>		County of Residence of First Listed Defendant Barnstable <small>(IN U.S. PLAINTIFF CASES ONLY)</small>	
		<small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</small>	
(c) Attorney's (Firm Name, Address, and Telephone Number) 617-565-2500 John S. Casler, Esq., U.S. Dept. of Labor / SOL JFK Fed. Bldg., Rm. E-375, Boston, MA 02203		Attorneys (If Known) Craig I. Zirbel, Esq. 7500 East Butcherus Dr., Scottsdale, AZ	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <small>(U.S. Government Not a Party)</small>	Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5	
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small>	Citizen of Another State <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 6	
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 Foreign Nation <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 7	
IV. NATURE OF SUIT (Place an "X" in One Box Only)		CONTRACT	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		TORTS	
<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury		FORFEITURE/PENALTY	
<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		BANKRUPTCY	
REAL PROPERTY		PROPERTY RIGHTS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug Med. Malpractice <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	
CIVIL RIGHTS		SOCIAL SECURITY	
<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
PRISONER PETITIONS		FEDERAL TAX SUITS	
<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
VI. ORIGIN (Place an "X" in One Box Only)		OTHER STATUTES	
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened
<input type="checkbox"/> 5 Transferred from another district (specify)		<input type="checkbox"/> 6 Multidistrict Litigation	
		<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	
		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. 201, et seq.	
VI. CAUSE OF ACTION		Brief description of cause: recover unpaid wages and liquidated damages pursuant to the provisions of sections 15(a)(2) and 16(c) of Fair Labor Standards Act of 1938	
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION <small>UNDER F.R.C.P. 23</small>	DEMAND \$ <small>CHECK YES only if demanded in complaint:</small> JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
VIII. RELATED CASE(S) IF ANY		<small>(See instructions):</small> JUDGE DOCKET NUMBER	
<small>DATE</small> 2/2/05		<small>SIGNATURE OF ATTORNEY OF RECORD</small> <i>Bir</i>	
<small>FOR OFFICE USE ONLY</small>			
<small>RECEIPT #</small>		<small>AMOUNT</small>	
		<small>APPLYING JFP</small>	
		<small>JUDGE</small>	
		<small>MAG. JUDGE</small>	

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Elaine L. Chao v. Blase Inc. et al

1. Title of case (name of first party on each side only) _____

FILED

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2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

2005 FEB - 3 P 12:24

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, U.S. DISTRICT COURT
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. DISTRICT OF MASSACHUSETTS
Also complete A0120 or A0121
for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John S. Casler, EsquireADDRESS JFK Federal Bldg., Room E-375, Boston, MA 02203TELEPHONE NO. 617-565-2500